

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA)	
Plaintiff,)	
)	
v.)	1:04 CR 10074-01-JLT
)	
PHILLIP HYDE)	
Defendant)	
)	
and)	
)	
BICKNELL & SMITH)	
Garnishee)	
_____)	

**DEFENDANT, PHILLIP HYDE’S, REQUEST FOR HEARING
ON CLAIM FOR EXEMPTION**

The Defendant, Phillip Hyde, hereby requests a hearing on his previously filed, Claim For Exemption.

The Defendant claims that the monies garnished pursuant to an Order of this Court dated August 18, 2005, are exempt from the reach of creditors pursuant to 11 U.S.C. §522(c), as said monies are the direct sale proceeds of the Defendant’s homestead, which was scheduled as exempt in his Chapter 7 Bankruptcy Petition, Docket No. 03-14530-JNF. Specifically, §522(c) states in pertinent part: “...property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case...”.

The Bankruptcy Court, Feeney, J., has issued an order dated September 26, 2005, which states in pertinent part: “...the Court shall take no action...until such time as the

United States District Court for the District of Massachusetts determines whether or not the postpetition restitution order entered as part of Debtor's sentence following a criminal conviction for mail fraud creates an entirely new obligation owed to United States unaffected by the Debtor's homestead exemption and 11 U.S.C. § 522(c), or whether the enforcement mechanisms for restitution orders set forth in 18 U.S.C. §§ 3613 and 3664 preempt the Massachusetts Homestead Act." (Ex. A)

Accordingly, the Debtor requests a hearing before the Court in order to resolve the issues placed before it by the Bankruptcy Court.

Defendant By His Attorney,

/s/ Leonard A. Frisoli
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Date:10/24/05

Certificate of Service

I, Leonard A. Frisoli, hereby certify that a true copy of the above document was served upon counsel for the Plaintiff, Christopher Donato, Esq., U.S. Attorney's Office, Financial Litigation Unit, 1 Courthouse Way, Suite 9200, Boston, MA 02210, and Garnishee, Bicknell & Smith, by mail, on October 24, 2005.

/s/ Leonard A. Frisoli
Leonard A. Frisoli